



STATE OF CALIFORNIA

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November 1, 2005

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2005-7 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by strikeout and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, December 2, 2005**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, they will be printed in Volume 3 of the Property Taxes Law Guide. At that time, the CLD becomes obsolete.

Copies of the backup correspondence are available by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

## **PROPERTY AND SPECIAL TAXES DEPARTMENT**

**PROPERTY TAXES CURRENT LEGAL DIGEST No. 2005-7**

**November 1, 2005**

### **220.0000 CHANGE IN OWNERSHIP**

**220.0310 Joint Tenancy.** A trust can be a joint tenant under Civil Code section 683(a), which specifies that a joint tenancy may be created by grant or devise to trustees as joint tenants. For property tax purposes, a joint tenant's interest can be transferred into a revocable trust without severing the joint tenancy if the other joint tenant is the present beneficiary. Under these circumstances, the joint tenants retain the present beneficial interest, the right of survivorship remains intact, and the trustee receives only bare legal title. The trustee never holds the present beneficial interest in the trust property, even though he or she has legal title and the power to sell. C 5/19/2005.

**220.0354 Leases.** A financing lease is a type of purchase agreement whereby the seller (vendor) accepts periodic payments for the purchase price while retaining title to the property for security purposes. Possession of the property transfers to the lessee without full legal title until payment of the purchase price or on a predetermined date. The true owner of the property subject to a financing lease is considered to be the lessee, even though legal title to the property remains in the lessor for purposes of security, if at the time of entering into the agreement: (1) the parties have a fixed intention to buy and sell; and (2) the entire obligation to pay arises, payments being on a deferred basis; or (3) the lessee is under an economic compulsion to exercise the purchase option.

A "synthetic lease" is a financing agreement used to convey a security interest in real property in exchange for capital. A synthetic lease may be considered a finance lease if it satisfies the above elements. C 5/24/2005.

### **400.0000 EXEMPTION**

#### **400.0025 Late Filing.**

*A. With respect to the regular roll, and using the welfare exemption as an example:*

- 1. Where a claimant files a claim late, the 90 percent/\$250 maximum of Revenue and Taxation Code section 270(a) is applicable.*
- 2. Where the same claimant files an additional Section B of a claim late, the initial 90 percent/\$250 maximum continues to be applicable.*
- 3. Once a claimant has been billed for the \$250 maximum for all its property claimed in the county, additional properties claimed to be exempt are fully exempt, even if the claimant files additional Section B(s) late.*
- 4. The \$250 maximum is applicable for each county in which property is claimed to be exempt.*
- 5. A late filed claim for exemption of property listed on the supplemental roll has no effect on items 1-4, above.*

*B. With respect to the supplemental roll:*

1. Where the claimant files a claim late, the 90 percent/\$250 maximum of Revenue and Taxation Code section 75.21(e) is applicable only to that claim.
2. Where the claimant files a claim on an additional supplemental assessment for the same fiscal year late, the 90 percent/\$250 maximum is applicable only to the additional claim.
3. Each late filing is subject to the 90 percent/\$250 maximum of section 75.21(e).
4. A late filed claim for exemption of property listed on the regular roll has no effect on items 1-3, above. LTA 5/9/86 (No. 86/34).

*This annotation is being deleted because it is out of date due to subsequent statutory amendments to the code.*

## 505.0000 HOMEOWNERS' EXEMPTION

**505.0072 Personal Lifetime Right of Occupancy.** Father and Mother transferred their home to their son but retained the right to continue living in the home. A personal and exclusive lifetime right to occupy the home is equivalent to a life estate if that right provides that the transferors are responsible for mortgage payments, taxes, utilities, maintenance and other expenses associated with the upkeep of the home. Under such terms, the property remains eligible for the homeowners' exemption. C 5/13/2005.

## 625.0000 PARENT-CHILD TRANSFERS

**625.0162 Principal Residence.** Revenue and Taxation Code section 63.1(a)(1) provides that the purchase or transfer of the principal residence of an eligible transferor may be excluded from the meaning of "change in ownership." In order for the exclusion to apply, the homeowners' exemption must have been granted in the name of the transferor. Without the granting of the exemption, it cannot be presumed that the home was a principal residence, regardless of the evidence provided. C 6/16/2005.

**625.0213 Trusts.** When a trust instrument creating a testamentary trust provides that a husband and wife are the present income beneficiaries of the trust and that their children have remainder interests in the trust property, the children's interests become possessory upon the death of the last surviving parent as transfers from the settlor through the trust to the children. If the settlor is a person other than a parent, there is no transfer from the parents and, therefore, the parent/child exclusion does not apply.

The fact that the children receive some of the net income of the trust during their parents' lives is not evidence sufficient to establish that they obtained a present interest in the trust real property at the time the trust was created, when there are non-real property trust assets which could be the source of the income paid to them. C 8/5/91. (M99-1).

*This annotation is being deleted because the backup correspondence is incomplete since the enactment of the grandparent-grandchild exclusion.*

**880.0000 WELFARE EXEMPTION**

~~880.0146 Limited Liability Company.~~ Revenue and Taxation Code section 214(g)(1), which permits exemption for properties owned and operated by “limited partnerships in which the managing general partner is an eligible nonprofit corporation,” is, by its express terms, applicable only to limited partnerships. Properties owned and operated by limited liability companies in which the managing member is a nonprofit corporation are not eligible for exemption under the section. C 1/12/00.

*This annotation is obsolete due to the amendment of section 214 by Chapter 354, Stats. 2004, and the passage of Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption.*

880.0403 Housing. A public benefit corporation that is organized for the specific purpose to preserve affordable housing, including the development and preservation of affordable mobilehome park/manufactured housing community living, is eligible for exemption within the charitable purposes aspect of Revenue and Taxation Code section 214(a). The corporation's function of assisting mobilehome park residents to purchase their park does not cause disqualification of the organization from the exemption. C 5/12/2005.